

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 11, 2003, at 6:30 p.m. in Room G55/G59 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: Linda Radler, Chairman
James Ward
Mary Voelker
Ray Dwyer
Darryl Judson

BOARD MEMBERS ABSENT: Robert Bartholomew
Paul Schultz

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Kevin Biesboer, BA03:047, petitioner
Joel & Carol Kuehl, BA03:050, owners
Karl Holtermann, BA03:050, petitioner
Jeffrey Berg, BA03:044, petitioner
Gene Schaal, BA03:048
Scott & Janet Fischer, BA03:048 petitioners
Joseph Dahl, BA03:051, petitioner
Cynthia Walters, BA03:051, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Ward *I move we approve the Summary of the Meeting of May 14, 2003.*

The motion was seconded by Ms. Voelker and Ms. Radler voted yes. Mr. Dwyer and Mr. Judson did not attend the May 14, 2003 meeting, therefore, did not vote.

NEW BUSINESS:

BA03:044 JEFFREY J. BERG

Ms. Voelker *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the same conditions and reasons, as stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following condition:

- 1.) The bedroom construction, including raising the roofline, must be constructed within the same footprint as the existing structure. If the overhangs exceed two (2) ft. in width, the bedroom must be constructed the additional distance from the lot line as the overhangs exceed two (2) ft. in width.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing residence is already in a non-conforming location and, because of building code standards, new footings need to be installed. If footings would not be required, the petitioner would already have been permitted the opportunity to remodel the existing bedroom as proposed. Requiring the petitioner to remove the existing bedroom from the rest of the existing residence because of the requirement for new footings would require the petitioner to create a new floor plan for the rest of the house to compensate for the removed bedroom, ultimately exceeding the 50% remodeling requirements. The existing structure is substantial and has recently been remodeled non-structurally and requiring the petitioners to ultimately relocate their residence because of a 10 ft. x 16 ft. bedroom repair would be unreasonable. Therefore, granting the requested variance would be in conformance with the purpose and intent of the Ordinance.

BA03:045 NORBERT M MIKULA – GEMINI BUILDERS, INC. (Mr. & Mrs. Paul Waggoner – Owners)

The proposal was withdrawn by the petitioner.

BA03:047 KEVIN BIESBOER

Mr. Judson

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the same conditions and reasons, as stated in the Staff Report.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for denial of the offset variance and approval of the floor area ratio and open space variances, with the following conditions:

- 1.) The residence, garage, and all decks, patios and all other appurtenances must meet the road setback when averaging with the neighbors, approximately 21 ft. from the established road right-of-way of Madison Street. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the established road right-of-way as the overhangs exceed two (2) ft. in width.
- 2.) The residence, garage, and all decks, patios and all other appurtenances must meet the offset requirements, 12.5 ft. offset for the residence and garage and 7.5 ft. offset for decks and patios. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines as the overhangs exceed two (2) ft. in width.

- 3.) Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, garage, and any other appurtenances including decks and patios, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 4.) If the petitioner proposes the top of foundation elevation to be greater than two feet of the average road elevation, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed residence does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan, including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If approved as conditioned, the petitioner will enjoy a reasonable use of the property in the form of a new single-family residence with a garage with the intent to eliminate any potential adverse affects on adjoining properties and the natural resources in the area. Due to the non-conforming size of the lot, a variance is required from the floor area ratio and open space to allow any reasonably sized residence. As conditioned, the approval allows the petitioner minimal amount of relief from the Ordinance requirements to allow reasonable use of the property. The approved structure still conforms to the general desirability of the neighborhood. Other lots in the area have similar sized structures. Again, the approval as conditioned, will allow the petitioners a reasonable use of their property, while minimizing the impacts to the surrounding neighborhood and complying with the general desirability of the neighborhood. Therefore, granting the requested floor area ratio and open space variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance. In addition, the petitioners have the ability to construct a reasonably sized structure on the property without encroaching on the offset or road setback. Therefore, denial of the road setback and offset would not deny the petitioners reasonable use of the property and approving the road setback and offset would not conform with the purpose and intent of the Ordinance.

BA03:048 SCOTT FISCHER

Ms. Radler

I make a motion to approve the petitioners request as presented for the following reasons: I do think that they have a hardship because of the lay of the land and the way it is set up. The only other possibility for a garage site is next to their existing garage, but that cuts off any access they have without taking out another bunch of trees to service their septic system, which needs to be done approximately every two years or whenever necessary. I do not feel that the sites the staff has proposed for a possible garage site are viable

options in this case. You will find that the ridges and kettles would create a difficulty to construct a garage in another location. The neighbors won't even know that it is there, because of the heavily wooded area between the properties.

The motion was seconded by Ms. Voelker with 4 yes votes. Mr. Dwyer voted no.

The staff's recommendation was for denial for the following reasons:

The petitioner has failed to demonstrate that denial of this variance will result in an unnecessary hardship, which the Wisconsin Supreme Court has defined as a situation where, in the absence of a variance, no reasonable use can be made of the property at all. The petitioner currently has reasonable use with the existing residence and attached garage, however, if the petitioner feels that additional storage is needed, alternatives exist, which would not require the need for a variance, as pointed out above. Therefore, granting the requested variance would not be in conformance with the purpose and intent of the Ordinance.

BA03:050 KARL HOLTERMANN – BARTELT-FILO (Joel & Carol Kuehl-Owners)

Mr. Ward

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following modification to Condition No. 1: The proposed deck must either be no greater than 15 ft. lakeward of the residence or not extend closer to the shoreline than the existing lower patio, whichever distance is more restrictive, for the reasons as stated in the Staff Report.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The deck must not be located any closer than the required shore and floodplain setbacks and offset requirements in accordance with the Waukesha County Shoreland and Floodland Protection Ordinance.
- 2.) Prior to the issuance of a Zoning Permit, a stakeout plat-of-survey showing the location of the residence, including the bay window, attached garage, shed, deck and patio, in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 3.) If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed bay window and deck does not result in adverse drainage onto adjacent properties.

The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring

properties or the road. The following information must be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan, including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. **No retaining walls are permitted as part of this project. The existing retaining walls located on the lakeside of the patio should be reduced to less than 12 inches in total height, as to be considered a planting bed rather than a retaining wall.**

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the petitioner's request, with the above conditions, is a reasonable request to repair an existing broken window. The petitioner is only requesting to increase the floor area ratio by 0.41%. The existing structure is already non-conforming to the floor area ratio requirements and adding to the floor area ratio, as requested, will not adversely impact the surrounding area or general desirability of the neighborhood and will not negatively impact natural resources in the area any further. This small addition will provide an additional ingress and egress to and from the residence providing a safer environment for the property owners. The residence is located in the most practical location possible on the property; therefore, prohibiting the petitioner from improving the structure and adding such a minor addition to increase the function of a window would not be practical. The proposed addition, as requested, is within the spirit and intent of the Ordinance.

BA03:051 CYNTHIA WALTERS & JOSEPH DAUL

Ms. Voelker

I make a motion to adopt the staff's recommendation, as stated in the Staff Report with the exception of Condition No. 1. Condition No. 1 shall be changed to read: The total square footage for the residence and attached garage shall not exceed 2,200 sq. ft. The garage must be at least 400 sq. ft. in size, for the same reasons as stated in the Staff Report. The square footage allowed has been changed to be consistent with past Board of Adjustment decisions. (The Board of Adjustment stated that if the patio, which is located further from the lake could be approved by a zoning permit meeting all Ordinance requirements, it should be permitted or it could be brought forward to the Board under old business.)

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The total square footage of the structures on the property shall not exceed 1,800 sq. ft., approximately 23.55%, including the attached garage. This would allow the petitioner's an additional 936.25 sq. ft. The attached garage shall not exceed 576 sq. ft. in size.
- 2.) The proposed addition shall not exceed the height requirements, as stated in the Ordinance. The proposed addition to the residence shall not contain a third story. If an attic is proposed above the second story for storage only, it shall contain a pull-down staircase and shall not

exceed 6 ft. in height from the floor to the ceiling at any point.

- 3.) The residence, attached garage, and all decks, patios and all other appurtenances must not be located closer than 13.5 ft. from the established road right-of-way of West Lake Drive, West Lake Drive having an established road right-of-way of 66 ft. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the established road right-of-way as the overhangs exceed two (2) ft. in width.
- 4.) The addition to the existing residence, attached garage, and all decks, patios and all other appurtenances must meet the offset requirements. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines as the overhangs exceed two (2) ft. in width.
- 5.) The patios located within 70 ft. of the shoreline shall be removed and the retaining walls located within 75 ft. of the shoreline shall be removed. The area shall be re-vegetated immediately following removal. If any stone is used as decorative landscaping, it should not exceed 12 inches in height and shall be approved by the Waukesha County Department of Parks and Land Use.
- 6.) Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 7.) Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed addition, attached garage, and any other appurtenances including decks and patios, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 8.) In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan, including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If approved, as conditioned, the petitioner will enjoy a reasonable use of the property, allowing the petitioner to have a place for storage and vehicles other than using the outside for the storage of vehicles and other items. Currently, the petitioners have a small cottage that appears to have been recently remodeled as a year-round single-family residence with no place for storage. If approved, with the above conditions, the petitioner is permitted minimal relief from the zoning requirements

possible to allow them reasonable use of the property, while maintaining the character of the surrounding area and the general desirability of the neighborhood. The existing residence and proposed addition, as conditioned, are reasonable in size and could not be located in a more-conforming location on the property. Allowing the petitioner to reduce the road setback, as conditioned, will still allow a 21.5 ft. vision corridor between the addition and the recorded 50 ft. road right-of-way. This will give the adjacent properties enough area to view oncoming traffic on West Lake Drive. If the road right-of-way were reduced any further, the potential to view traffic along the road would be reduced and could become potentially dangerous. Therefore, as conditioned, the above request would conform with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA02:035 EUGENE SILVA

Ms. Voelker

I make a motion to change the approval of the project to allow an attached garage rather than a detached garage, as stated in the "Staff Memorandum", dated June 11, 2003.

The motion was seconded by Mr. Judson and carried unanimously.

BA03:035 RICHARD & DAWN RAY

Ms. Voelker

I make a motion to modify Condition No. 5 to read: "The 53 sq. ft. shed must be removed from the property, after completion of construction and upon time of the issuance of an occupancy permit."

The motion was seconded by Mr. Dwyer and carried unanimously.

BA03:036 Tom Jens II

Ms. Radler

I make a motion to modify the decision dated, May 15, 2003, to approve the special exception to allow an accessory building floor area ratio of 3.9%, or 962 sq. ft. and remove the word provision from the reasons.

The motion was seconded by Ms. Voelker and carried unanimously.

ADJOURNMENT:

Ms. Voelker

I move we adjourn this meeting at 8:09 p.m.

The motion was seconded by Mr. Judson and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment

N:\PLU FILES\Minutes - Final\Board of Adjustment\03-06-11_min.doc